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104TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 104–3

BALANCED BUDGET CONSTITUTIONAL AMENDMENT

JANUARY 18, 1995.—Referred to the House Calendar and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary, submitted the following

REPORT

together with

DISSENTING AND ADDITIONAL VIEWS

[To accompany H.J. Res. 1]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States, having considered the same, report favorably thereon with an amendment and recommend that the joint resolution as amended do pass.

The amendment is as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE —

"SECTION 1. Prior to each fiscal year, Congress shall, by law, adopt a statement of receipts and outlays for such fiscal year in which total outlays are not greater than total receipts. Congress may, by law, amend that statement provided revised outlays are not greater than revised receipts. Congress may provide in that statement for a specific excess of outlays over receipts by a vote directed solely to that subject in which three-fifths of the whole number of each House agree to such excess. Congress and the President shall ensure that actual outlays do not exceed the outlays set forth in such statement.

"SECTION 2. No bill to increase tax revenue shall become law unless approved by a three-fifths majority of the whole number of each House of Congress.

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"SECTION 3. Prior to each fiscal year, the President shall transmit to Congress a proposed statement of receipts and outlays for such fiscal year consistent with the provisions of this Article.

"SECTION 4. Congress may waive the provisions of this Article for any fiscal year in which a declaration of war is in effect. The provisions of this Article may be waived for any fiscal year in which the United States faces an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

"SECTION 5. Total receipts shall include all receipts of the United States except those derived from borrowing and total outlays shall include all outlays of the United States except those for the repayment of debt principal.

"SECTION 6. The amount of the debt of the United States held by the public as of the date this Article takes effect shall become a permanent limit on such debt and there shall be no increase in such amount unless three-fifths of the whole number of each House of Congress shall have passed a bill approving such increase and such bill has become law.

"SECTION 7. All votes taken by the House of Representatives or the Senate under this Article shall be rollcall votes.

"SECTION 8. Congress shall enforce and implement this Article by appropriate legislation.

"SECTION 9. This Article shall take effect for the fiscal year 2002 or for the second fiscal year beginning after its ratification, whichever is later.".

EXPLANATION OF AMENDMENT

Inasmuch as H.J. Res. 1 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

SUMMARY AND PURPOSE

H.J. Res. 1, the proposed balanced budget amendment to the Constitution of the United States, is designed to discourage the federal government from engaging in deficit spending, increasing taxes, and raising the ceiling on debt held by the public. The amendment generally requires three-fifths votes of each House's total membership for laws providing for (1) an excess of outlays over receipts [section 1], (2) an increase in tax revenue [section 2], and (3) a higher debt limit [section 6]. In addition, the President is required to submit balanced budgets to Congress [section 3]. Congress will be able to waive the Amendment's requirements based on a declaration of war; an alternative waiver mechanism requires a joint resolution (that is supported by a majority of the total membership in each House and becomes law) declaring "an imminent and serious military threat to national security," [section 4]. The constitutional amendment takes effect "for the fiscal year 2002 or for the second fiscal year beginning after its ratification, whichever is later," [section 9].

CONSTITUTIONAL AMENDMENT PROCEDURES

Congress proposes constitutional amendments by two-thirds votes (of members voting) in both houses of Congress. The alternative constitutional procedure of Congress calling a convention for proposing amendments—on application of the legislatures of two-thirds of the states—is unused to date, although at one point 32 of the requisite 34 states called for a constitutional convention in response to the balanced budget issue. A constitutional amendment—whether proposed by two-thirds votes in Congress or by a constitutional convention—must be ratified by the legislatures or conventions in three-fourths of the states in accordance with the

mode of ratification proposed by Congress; the preamble to H.J. Res. 1 proposes ratification by state legislature, the process generally prescribed.

HEARINGS

Representative Joe Barton, Chairman Henry J. Hyde, Representative Randy Tate and Representative Pete Geren introduced H.J. Res. 1 on January 4, 1995, the first day of the 104th Congress. The Subcommittee on the Constitution held two days of hearings on the proposed Balanced Budget Amendment on Monday, January 9 and Tuesday, January 10, 1995. At its hearing on January 9, the Subcommittee heard testimony from the following witnesses: Representative Joe Barton, Representative Bob Franks, Representative Dan Schaefer, Representative Bill Archer, Honorable Alice M. Rivlin, Director, Office of Management and Budget, Honorable William P. Barr, former Attorney General, Dr. Martin Anderson, Senior Fellow, Hoover Institution (Stanford University), and Dr. William A. Niskanen, Chairman, CATO Institute. On January 10, the Subcommittee heard testimony from the following witnesses: Representative Richard Gephardt, Minority Leader of the House of Representatives, Representatives Charles Stenholm, Representative Robert Wise, Representative Karen McCarthy, Honorable Jeffrey N. Wennberg, Mayor of Rutland, Vermont, on behalf of the National League of Cities, Honorable John Hamre, Under Secretary of Defense, Robert Ball, former Commissioner, Social Security Administration, Dr. Robert Eisner, Professor of Economics Emeritus, Northwestern University, and Alan B. Morrison, Public Citizen.

Balanced budget constitutional amendment related hearings had previously been held in the Committee on the Judiciary's Subcommittee on Monopolies and Commercial Law in 1979–1980, 1981–1982, and 1987, and in the successor Subcommittee on Economic and Commercial Law in 1990.

It is important to note and emphasize that until this year the full Committee on the Judiciary had never considered a balanced budget proposal in a markup session. Prior to this Congress, the Committee had never reported a balanced budget amendment to the whole House. Instead, such amendments were considered in the House of Representatives only after discharge petition efforts were successful.

PRIOR HOUSE FLOOR CONSIDERATION

Balanced budget constitutional amendments have enjoyed strong support in Congress for many years. Lopsided majorities in the House of Representatives have voted in favor of such amendments, brought to the Floor through successful discharge petition efforts, on four occasions—236 yeas to 187 nays in 1982, 279 yeas to 150 nays in 1990, 280 yeas to 153 nays in 1992, and 271 yeas to 153 nays in 1994—but have fallen short on each occasion of the constitutionally required two-thirds vote. The Senate mustered the requisite two-thirds vote in 1982 (69 yeas to 31 nays) but fell short in 1986 (66 yeas to 34 nays) and 1994 (63 yeas to 37 nays).

NEED FOR THE BALANCED BUDGET CONSTITUTIONAL AMENDMENT

The major impetus for the balanced budget constitutional amendment is the rapidly mounting federal debt and the impact of climbing interest payments on future generations of Americans. Legislative efforts to move in the direction of a balanced budget have not prevented unacceptable levels of deficit spending. Deficit targets in the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings Act) have been relaxed periodically, and new budget control mechanisms have not offered a realistic long term prospect of continued deficit reduction.

The current and projected figures relating to the federal government's fiscal situation are both inescapable and staggering. The federal debt tripled during the last ten fiscal years—approximately $4.7 trillion today. The federal deficit for fiscal year 1995 is projected at $176 billion. In fiscal year 1996, the deficit is expected to increase to $207 billion. The anticipated deficit will reach $284 billion in fiscal year 2000—with projections for annual increases thereafter and a fiscal year 2005 deficit of $421 billion. The federal government has run budget deficits in 33 out of the last 34 years.

The net interest on the national debt for this fiscal year (FY 1995) is projected at $235 billion. Next fiscal year, the interest on the national debt is expected to increase to $260 billion. By the year 2000, the current estimates are that the interest on the debt will reach $310 billion. Interest on the national debt is now the third largest single item in the federal budget, after social security and defense.

In view of these statistics, the need for constitutional constraints is greater than ever. The amendment's effective date of FY 2002—or later depending on the timetable for state ratification—is designed to provide impetus for phased deficit reductions in intervening years, facilitating an orderly transition to a balanced budget.

The adoption of the balanced budget constitutional amendment would be more than a mere symbolic act. It would have a powerful impact on federal fiscal policies by establishing a binding legal framework—a disciplined structure—requiring Congress to make tough decisions. A constitutional amendment is not a substitute for difficult legislative choices but rather a catalyst for congressional action.

A Balanced Budget Constitutional Amendment is consistent with the nature of our Federal Constitution which already addresses economic issues in various contexts. Congressional powers delineated in the Constitution include laying and collecting taxes, imposing customs duties and tariffs, paying debts of the United States, borrowing money, regulating interstate commerce and commerce with foreign nations, and coining money. The fifth and fourteenth amendments include protections of property rights, and the sixteenth amendment authorizes the income tax. Because of the substantial attention the Constitution already gives to economics, arguments that fiscal policy does not belong in the Constitution are unconvincing.

The Framers and leaders in government during most of our national history accepted balanced budget principles. For that reason, mandating a balanced budget would have been superfluous in ear-

lier times. Today, in an era of deficit spending, the balanced budget constitutional amendment is needed to give expression to a practice accepted widely for so many years—namely, spending within our means.

New rules are essential to overcome the pro-spending institutional bias of Congress. This bias results from the interests of beneficiaries of various programs that are more focused than the general public interest in deficit reduction. Future generations that will bear the greatest costs of excessive spending are not formally represented in the political process—and for that reason need special protections.

Governmental flexibility is not compromised by requiring supermajority votes to overcome balanced budget requirements. Three-fifths vote provisions (with war and national security related exceptions) do not preclude deficit spending, tax increases, and increases in the debt ceiling but rather discourage such action from being taken lightly.

The three-fifths vote required for legislation to increase tax revenue is an important feature of this constitutional amendment. Parallelism among various voting requirements is necessary to discourage excessive reliance on tax increases rather than spending cuts to balance the budget.

Congress today cannot reasonably be expected to spell out the details of spending cuts through Fiscal Year 2002. The anticipated implementation of the new fiscal rules contained in H.J. Res. 1 will facilitate consensus on deficit reductions—consensus that history teaches us remains illusive in the absence of a constitutional framework for effectuating a balanced budget. A constitutional amendment, by giving expression to the inevitability of a new fiscal reality, will set the parameters for congressional budget deliberations.

Predicting the details of economic developments years in advance is fraught with difficulties because the world changes—as events of recent years amply demonstrate. We can agree on the need to avoid saddling our children and grandchildren with a progressively greater debt burden without necessarily knowing today what the priorities will be among competing programs seven years hence. Submission of a balanced budget constitutional amendment to the states is an important first step that no longer can be delayed.

Some state officials advocate the inclusion of a prohibition on new unfunded mandates in the Balanced Budget Constitutional Amendment. They are concerned that federal government cuts in expenditures and programs—to achieve a balanced budget—may be accompanied by the imposition through congressional enactments of new requirements on the states without providing the funds to carry them out. In that regard, the Committee is hopeful that the legislation (H.R. 5) on unfunded mandates currently pending in Congress will be responsive to state needs. The issue may have significant implications for the willingness of the legislatures of three-fourths of the states to ratify a constitutional amendment.

THE BALANCED BUDGET CONSTITUTIONAL AMENDMENT AND SOCIAL SECURITY

A continuation of deficit spending poses the greatest long term threat to the integrity of Social Security. This is true both because mushrooming interest payments on the national debt increase pressures to reduce expenditures for vital programs—such as Social Security—and because an increasing national debt can erode the value of Social Security and other trust fund surpluses invested in Treasury securities by fueling the fires of inflation. The balanced budget constitutional amendment will enhance rather than detract from the protection Social Security enjoys in the years ahead.

The Committee concluded that exempting Social Security from computations of receipts and outlays would not be helpful to Social Security beneficiaries. Although Social Security accounts are running a surplus at this time, the situation is expected to change in the future with a Social Security related deficit developing. If we exclude Social Security from balanced budget computations, Congress will not have to make adjustments elsewhere in the budget to compensate for this projected deficit. The Judiciary Committee changed H.J. Res. 1 as originally introduced in a way that protects Social Security—by exempting trust fund investments from the strictures of Section 6—the debt ceiling provision.

Social Security is a statutory program that is not referred to in the Constitution. Since Congress possesses the legislative authority to change the Social Security program, specifically referring to "Social Security" in the Constitution could create a giant loophole allowing Congress to call anything Social Security and thus evade balanced budget requirements.

The Committee is confident the United States will not violate its commitment to older Americans. The Social Security program enjoys broad congressional support. If we need to engage in deficit spending to protect Social Security, a three-fifths congressional vote can authorize it. The balanced budget constitutional amendment, by discouraging spending for less important purposes, enhances rather than detracts from the protection Social Security will enjoy in the years ahead.

ENFORCEMENT AND IMPLEMENTATION

The Committee expects that Congress and the President will fully comply with the terms and requirements of the Balanced Budget Constitutional Amendment. Those who challenge this assumption overlook both the regard the American people have for their Constitution and our national tradition of respect for the rule of law. Members of Congress and the President take an oath of office to uphold the Constitution. There is no reason to assume that they will disregard their obligation or violate their trust.

The operational details for implementing the Amendment will be spelled out in legislation—as Section 8 explicitly contemplates—with limited judicial involvement as a last resort. In that regard, the Committee endorses former Attorney General William P. Barr's analysis of the constraints on an excessive judicial role. His testimony before the Subcommittee on the Constitution explains:

> I believe there are three basic constraints that will tend to prevent the courts from becoming unduly involved in the budgetary process: (1) the limitations on the power of federal courts contained in Article III of the Constitution—primarily the requirement of standing; (2) the deference courts owe to Congress, both under existing constitutional doctrines, and particularly under section [8] of the Amendment itself, which expressly confers enforcement responsibility on Congress; and (3) the limits on judicial remedies running against coordinate branches of government, both that the courts have imposed upon themselves and that, in appropriate circumstances, Congress may impose on the courts.

There are different dimensions to the standing requirement. A plaintiff must show "injury in fact"—that he or she has suffered some concrete, particularized harm. In addition, a plaintiff must show that the specific injury was caused by and can be traced to the alleged illegal conduct. Third, a plaintiff must demonstrate that the relief sought is likely to redress the injury.

A plaintiff cannot rely on generalized grievances and burdens shared by all citizens and taxpayers. Instead, a plaintiff must be able to show a specific injury that he/she has distinctively and uniquely sustained. Given the variety and complexity of the federal budget and budget legislation, private citizens generally are not going to be able to demonstrate the unique harm necessary to justify judicial intervention.

Similarly, congressional standing has a very high threshold. Mr. Barr summarizes the current state of the law in his testimony:

> The Supreme Court has never recognized congressional standing. * * * Those lower courts that have allowed congressional standing have limited it in ways that would greatly restrict its use in efforts to enforce the Balanced Budget Amendment. First, Members must demonstrate that they have suffered injury in fact by dilution or nullification of their congressional voting power. In addition, Members must still satisfy the other requirements of Article III standing, including the traceability and repressibility requirements. And finally, under the doctrine of 'equitable discretion,' recognized by the D.C. Circuit, Members must show that substantial relief could not otherwise be obtained from fellow legislators through the enactment, repeal or amendment of a statute.

Section 8 of H.J. Res. 1 explicitly provides Congress with the authority to "enforce and implement this Article by appropriate legislation." So, if the courts make a major revision in federal standing requirements in a balanced budget constitutional amendment related case—which appears unlikely—Congress will be able to respond at the appropriate time. Alternatively, Congress can act in anticipation of that possibility. As Mr. Barr observes, "One way to minimize the risk of such judicial activism is for Congress to take care in the wording of any particular statutes that are enacted in implementing the Amendment so as not to give rise to colorable claims of standing or private rights of action." Addressing standing in the

body of the Amendment is unnecessary and inconsistent with historical experience in amending the Constitution.

In those unusual situations where courts possibly reach the merits of cases involving the balanced budget constitutional amendment, judicial deference to congressional procedures and policy decisions generally can be anticipated. Courts, respectful of legislative prerogatives, are unlikely to overturn Congress' budgetary choices. If courts ever reach the point of finding a constitutional violation by Congress in the context of the balanced budget amendment, prudential considerations will inhibit intrusive remedial action. In any event, Congress can limit possible remedies in implementing legislation enacted pursuant to Section 8.

EXPLANATION OF CHANGES IN H.J. RES. 1 AS INTRODUCED

The amendment incorporates three significant improvements in H.J. Res. 1 as introduced.

First, the requirement of a three-fifths vote of the whole number of each House for legislation to increase "receipts"—in H.J. Res. 1 as introduced—now applies only to bills to increase "tax revenue." The Committee narrowed the scope of section 2 because the word "receipts" is unnecessarily broad and over-inclusive. The change was needed to avoid triggering the three-fifths vote requirement when legislation provides for additional monies to go into the Treasury without proposing an actual increase in taxes or tax rates.

There are a number of examples of such legislation. A debt collection bill could be designed to increase receipts. A bill imposing user fees undoubtedly would benefit the Treasury. Legislation strengthening the ability of the Internal Revenue Service to crack down on persons attempting to avoid their taxes could be expected to increase collections. No public policy justification exists, however, for making it more difficult to enact laws of this nature.

None of these proposed changes in existing statutes impose new taxes or increase tax rates. A balanced budget constitutional amendment should discourage congressional attempts to increase the tax burden—not discourage better debt collection, the imposition of user fees, or more efficient steps to enforce compliance with existing tax law.

Second, the description of debt for purposes of the permanent debt ceiling is changed by the Amendment from "Federal public debt" to "the debt of the United States held by the public." The change in terminology was needed to remove an apparently unintended obstacle to Social Security and other trust funds accumulating surpluses. Such surpluses, invested in Treasury securities, technically increase the public debt. An increase in the debt ceiling generally requires a three-fifths vote of each House's total membership.

The objective of a supermajority vote requirement to increase the debt ceiling is to discourage government borrowing to pay for additional spending—not to discourage Social Security and other trust fund surpluses. Trust fund investments do not result in outlays exceeding receipts but rather represent transactions that are internal to the federal government. The change in terminology exempts

trust fund investments from the strictures of Section 6—thus protecting Social Security.

Third, the permanent debt limit may differ as a result of Full Committee action. Section 6 of H.J. Res. 1 as introduced fixes the permanent debt limit at the amount of debt on "the first day of the second fiscal year beginning after the ratification of this Article. * * *" If the states ratify the balanced budget constitutional amendment expeditiously, the permanent debt limit could be fixed at the level of debt long before the beginning of FY 2002.

The general effective date provision (Section 9), however, specifies that the Article "shall take effect for the fiscal year 2002 or for the second fiscal year beginning after its ratification, whichever is later." Under this section, the Article cannot take effect prior to Fiscal Year 2002—thus ensuring an appropriate and reasonable transition period during which the United States can implement phased deficit reductions to reach a balanced budget.

Fixing the permanent debt ceiling at a lower level than the amount of debt at the time the Amendment takes effect places in doubt the validity of United States obligations. At the time the constitutional amendment takes effect and the requirement to balance the budget kicks in, we cannot find ourselves saddled with a debt ceiling that does not take account of amounts already owing. The change approved by the Committee on the Judiciary simply sets the debt ceiling at the amount of debt on the Article's effective date—which will be the first day of Fiscal Year 2002 or possibly later depending on the timetable for state ratification.

COMMITTEE ACTION AND VOTE

On January 11, 1995 the committee met to consider H.J. Res. 1. As described earlier, during its consideration the committee adopted two amendments offered by Chairman Hyde by voice vote. The first Hyde amendment substituted the term "tax revenue" for the word "receipts" in section 2 of the Article. The second Hyde amendment clarified the language in section 6 with regard to the effective date of the Article and substituted the "amount of the debt of the United States held by the public" in lieu of "amount of Federal public debt."

The committee then considered the following amendments, none of which was adopted.

1. An amendment by Mr. Frank to exempt the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund from total receipts and total outlays. The amendment was defeated by a 16–19 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Schumer	Mr. Gekas
Mr. Berman	Mr. Coble
Mr. Boucher	Mr. Smith
Mr. Bryant of Texas	Mr. Schiff
Mr. Reed	Mr. Gallegly
Mr. Nadler	Mr. Canady

Mr. Scott	Mr. Inglis
Mr. Watt	Mr. Goodlatte
Mr. Becerra	Mr. Buyer
Mr. Serrano	Mr. Hoke
Ms. Lofgren	Mr. Bono
Ms. Jackson Lee	Mr. Heineman
Mr. McCollum	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

2. An amendment by Mr. Scott to exempt payments and benefits earned as a result of service in the Armed Forces, under programs established prior to ratification. The amendment was defeated by a 12–22 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Schumer	Mr. McCollum
Mr. Boucher	Mr. Gekas
Mr. Bryant of Texas	Mr. Coble
Mr. Reed	Mr. Smith
Mr. Nadler	Mr. Schiff
Mr. Scott	Mr. Gallegly
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Berman
	Mr. Watt

3. An amendment by Mr. Berman to suspend the provisions of the Article in any fiscal year in which a declaration of war is in effect or in which the President determines, after consultation with Congress, that the United States faces an "imminent and serious military threat to national security." The amendment was defeated by a 5–30 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mr. Schumer	Mr. Moorhead
Mr. Berman	Mr. Sensenbrenner
Mr. Boucher	Mr. McCollum
Mr. Bryant of Texas	Mr. Gekas
	Mr. Coble
	Mr. Smith
	Mr. Schiff

Mr. Gallegly
Mr. Canady
Mr. Inglis
Mr. Goodlatte
Mr. Buyer
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr
Mrs. Schroeder
Mr. Frank
Mr. Reed
Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra
Mr. Serrano
Ms. Lofgren
Ms. Jackson Lee

4. An amendment by Mr. Reed to bar implementing legislation from impairing veterans' disability and death benefits, under programs established prior to ratification, from the coverage of the Article. The Reed amendment was defeated by a 13–18 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Schumer	Mr. Coble
Mr. Boucher	Mr. Smith
Mr. Bryant of Texas	Mr. Schiff
Mr. Reed	Mr. Gallegly
Mr. Nadler	Mr. Canady
Mr. Scott	Mr. Inglis
Mr. Watt	Mr. Goodlatte
Mr. Serrano	Mr. Buyer
Ms. Lofgren	Mr. Hoke
Ms. Jackson Lee	Mr. Bono
	Mr. Heineman
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

5. An amendment by Ms. Jackson Lee providing that Congress may waive the provisions of the Article in any fiscal year that the President, in consultation with the Joint Chiefs of Staff, determines that the "military readiness requirements" of the Defense Department "are not being fully funded." The Jackson Lee amendment was defeated by a 4–31 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mr. Berman	Mr. Moorhead
Mr. Scott	Mr. Sensenbrenner
Ms. Jackson Lee	Mr. McCollum
	Mr. Gekas
	Mr. Coble
	Mr. Smith
	Mr. Schiff
	Mr. Gallegly
	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mrs. Schroeder
	Mr. Frank
	Mr. Schumer
	Mr. Boucher
	Mr. Bryant of Texas
	Mr. Reed
	Mr. Nadler
	Mr. Watt
	Mr. Becerra
	Mr. Serrano
	Ms. Lofgren

6. An amendment by Mr. Conyers providing that the Article shall not take effect unless Congress has adopted a concurrent resolution setting forth a plan to achieve a balanced budget. Such plan would include: aggregate levels of new budget authority; totals of new budget authority and outlays for each major functional category; new budget authority and outlays on an account-by-account basis; an allocation of Federal revenues among major sources of such revenues; and a detailed list and description of the changes in Federal law required to carry out the plan. The Conyers amendment was defeated by a 14–19 rollcall vote.[1]

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Schumer	Mr. McCollum
Mr. Berman	Mr. Gekas
Mr. Boucher	Mr. Coble
Mr. Bryant of Texas	Mr. Smith
Mr. Reed	Mr. Schiff
Mr. Nadler	Mr. Gallegly
Mr. Scott	Mr. Canady

Mr. Watt	Mr. Inglis
Mr. Becerra	Mr. Goodlatte
Mr. Serrano	Mr. Buyer
Ms. Lofgren	Mr. Hoke
Ms. Jackson Lee	Mr. Bono
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

[1] Mr. Heineman was present at the time the rollcall was taken but his vote was not recorded by the clerk. Mr. Heineman subsequently requested that the record be corrected to indicate he was present and that he voted in the negative.

7. An amendment by Mr. Nadler to section 2 of Article, stating that a three-fifths majority vote in each House of Congress would not be required for bills "providing for more effective measures to enforce the tax laws." The Nadler amendment was defeated by a 14–20 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Schumer	Mr. McCollum
Mr. Boucher	Mr. Coble
Mr. Bryant of Texas	Mr. Smith
Mr. Reed	Mr. Schiff
Mr. Nadler	Mr. Gallegly
Mr. Scott	Mr. Canady
Mr. Watt	Mr. Inglis
Mr. Becerra	Mr. Goodlatte
Mr. Serrano	Mr. Buyer
Ms. Lofgren	Mr. Hoke
Ms. Jackson Lee	Mr. Bono
	Mr. Heineman
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Berman

8. An amendment by Mr. Becerra proposing to change the earliest effective date of the Article from fiscal year 2002 to fiscal year 2000. The Becerra amendment was defeated by a 7–28 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Nadler	Mr. McCollum
Mr. Scott	Mr. Gekas
Mr. Becerra	Mr. Coble
Ms. Jackson Lee	Mr. Smith
	Mr. Schiff
	Mr. Gallegly
	Mr. Canady
	Mr. Inglis

Mr. Goodlatte
Mr. Buyer
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr
Mr. Schumer
Mr. Berman
Mr. Boucher
Mr. Bryant of Texas
Mr. Reed
Mr. Watt
Mr. Serrano
Ms. Lofgren

9. An amendment by Mr. Frank stating that "Congress shall not implement this Article in a manner that increases financial burdens on States and local governments." The Frank amendment was defeated by a 15–20 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Schumer	Mr. McCollum
Mr. Berman	Mr. Gekas
Mr. Boucher	Mr. Coble
Mr. Bryant of Texas	Mr. Smith
Mr. Reed	Mr. Schiff
Mr. Nadler	Mr. Gallegly
Mr. Scott	Mr. Canady
Mr. Watt	Mr. Inglis
Mr. Becerra	Mr. Goodlatte
Mr. Serrano	Mr. Buyer
Ms. Lofgren	Mr. Hoke
Ms. Jackson Lee	Mr. Bono
	Mr. Heineman
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

10. An amendment by Mr. Watt to remove the requirement in section 6 of the Article for a three-fifths vote to raise the limit on federal debt held by the public. The Watt amendment was defeated by a 13–19 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Sensenbrenner
Mr. Frank	Mr. McCollum
Mr. Schumer	Mr. Coble
Mr. Boucher	Mr. Smith

Mr. Reed	Mr. Schiff
Mr. Nadler	Mr. Gallegly
Mr. Scott	Mr. Canady
Mr. Watt	Mr. Inglis
Mr. Becerra	Mr. Goodlatte
Mr. Serrano	Mr. Buyer
Ms. Lofgren	Mr. Hoke
Ms. Jackson Lee	Mr. Bono
	Mr. Heineman
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Bryant of Texas

11. Mr. Boucher offered an amendment in the nature of a substitute. The Boucher substitute proposed to permit Congress, by majority vote, to waive the balanced budget requirements if "real economic growth has been or will be negative for two consecutive quarters." In addition, the substitute proposed that outlays for capital expenditures not be subject to balanced budget requirements. The amendment also provided that receipts and outlays of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund "shall not be counted as receipts or outlays for purposes of this article." No three-fifths vote requirements were contained in the Boucher substitute. The Boucher substitute amendment was defeated by a 14–20 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. Sensenbrenner
Mr. Schumer	Mr. McCollum
Mr. Berman	Mr. Coble
Mr. Boucher	Mr. Smith
Mr. Bryant of Texas	Mr. Schiff
Mr. Reed	Mr. Gallegly
Mr. Nadler	Mr. Canady
Mr. Scott	Mr. Inglis
Mr. Watt	Mr. Goodlatte
Ms. Becerra	Mr. Buyer
Ms. Lofgren	Mr. Hoke
Ms. Jackson Lee	Mr. Bono
	Mr. Heineman
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Serrano

12. Mr. Bryant offered an amendment in the nature of a substitute, providing that bills to increase revenue may be approved by a majority of the whole number of each House (instead of three-fifths). The Bryant substitute was defeated by a 4–30 rollcall vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mr. Bryant of Texas	Mr. Moorhead
Mr. Scott	Mr. Sensenbrenner
Ms. Jackson Lee	Mr. McCollum
	Mr. Gekas
	Mr. Coble
	Mr. Smith
	Mr. Schiff
	Mr. Gallegly
	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant of Tennessee
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mrs. Schroeder
	Mr. Schumer
	Mr. Berman
	Mr. Boucher
	Mr. Reed
	Mr. Nadler
	Mr. Watt
	Mr. Becerra
	Mr. Serrano
	Ms. Lofgren

13. Mr. Berman offered an amendment to section 4, providing that Congress may waive the balanced budget requirements in any fiscal year in which the President determines that Federal assistance under the Disaster Relief and Emergency Assistance Act is warranted. The Berman amendment was defeated by a 12–22 roll-call vote.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Berman	Mr. Sensenbrenner
Mr. Boucher	Mr. McCollum
Mr. Bryant of Texas	Mr. Gekas
Mr. Reed	Mr. Coble
Mr. Scott	Mr. Smith
Mr. Watt	Mr. Schiff
Mr. Becerra	Mr. Gallegly
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson Lee	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono

Mr. Heineman
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr
Mr. Schumer
Mr. Nadler

The committee then considered a motion ordering the previous question, a motion ordering H.J. Res. 1 favorably reported to the whole House, and three unanimous consent requests. Rollcall votes were ordered on each matter.

14. Mr. Moorhead offered a motion on ordering the previous question. The previous question was ordered on a 20–14 rollcall vote.

YEAS	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Schumer
Mr. McCollum	Mr. Berman
Mr. Gekas	Mr. Boucher
Mr. Coble	Mr. Bryant of Texas
Mr. Smith	Mr. Reed
Mr. Schiff	Mr. Nadler
Mr. Gallegly	Mr. Scott
Mr. Canady	Mr. Watt
Mr. Inglis	Mr. Becerra
Mr. Goodlatte	Mr. Serrano
Mr. Buyer	Ms. Lofgren
Mr. Hoke	Ms. Jackson Lee
Mr. Bono	
Mr. Heineman	
Mr. Bryant of Tennessee	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	

15. Final passage. Mr. Hyde moved to report H.J. Res. 1, as amended, favorably to the whole House. The resolution was ordered favorably reported by a rollcall vote of 20–13, with one Member (Ms. Jackson Lee) voting "present."

YEAS	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Schumer
Mr. McCollum	Mr. Berman
Mr. Gekas	Mr. Boucher
Mr. Coble	Mr. Bryant of Texas
Mr. Smith	Mr. Reed
Mr. Schiff	Mr. Nadler
Mr. Gallegly	Mr. Scott
Mr. Canady	Mr. Watt
Mr. Inglis	Mr. Becerra
Mr. Goodlatte	Mr. Serrano

Mr. Buyer
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant of Tennessee
Mr. Chabot
Mr. Flanagan
Mr. Barr

Ms. Lofgren

16. Mr. Sensenbrenner moved that the resolution be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted during committee consideration. The motion was approved by a rollcall vote of 17–14.

YEAS	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Schumer
Mr. McCollum	Mr. Berman
Mr. Gekas	Mr. Boucher
Mr. Smith	Mr. Bryant of Texas
Mr. Schiff	Mr. Reed
Mr. Canady	Mr. Nadler
Mr. Inglis	Mr. Scott
Mr. Goodlatte	Mr. Watt
Mr. Hoke	Mr. Becerra
Mr. Bono	Mr. Serrano
Mr. Heineman	Ms. Lofgren
Mr. Bryant of Tennessee	Ms. Jackson Lee
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	

17. Mr. Sensenbrenner moved that the staff be directed to make any technical and conforming changes. The motion was approved by a rollcall vote of 18–13.

YEAS	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Schumer
Mr. McCollum	Mr. Berman
Mr. Gekas	Mr. Boucher
Mr. Smith	Mr. Bryant of Texas
Mr. Schiff	Mr. Reed
Mr. Canady	Mr. Nadler
Mr. Inglis	Mr. Scott
Mr. Goodlatte	Mr. Becerra
Mr. Hoke	Mr. Serrano
Mr. Bono	Ms. Lofgren
Mr. Heineman	Ms. Jackson Lee
Mr. Bryant of Tennessee	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	

Mr. Watt

18. Mr. Sensenbrenner moved that the Chairman be authorized to go to conference on H.J. Res. 1, pursuant to House Rule XX. The motion was approved by a rollcall vote of 17–14.

YEAS	NAYS
Mr. Hyde	Mr. Conyers
Mr. Moorhead	Mrs. Schroeder
Mr. Sensenbrenner	Mr. Schumer
Mr. McCollum	Mr. Berman
Mr. Gekas	Mr. Boucher
Mr. Smith	Mr. Bryant of Texas
Mr. Schiff	Mr. Reed
Mr. Canady	Mr. Nadler
Mr. Inglis	Mr. Scott
Mr. Goodlatte	Mr. Watt
Mr. Hoke	Mr. Becerra
Mr. Bono	Mr. Serrano
Mr. Heineman	Ms. Lofgren
Mr. Bryant of Tennessee	Ms. Jackson Lee
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	

SECTION-BY-SECTION ANALYSIS

Section 1

This section requires Congress, before the beginning of a fiscal year, to adopt a balanced budget—"a statement of receipts and outlays for such fiscal year in which total outlays are not greater than total receipts." The annual adoption of such a statement by law will prevent Congress from continuing to plan on deficit spending—as it has for so many years. Instead, Congress will commit itself each year to the details of implementing the balanced budget principle.

In recognition of the fact that circumstances can change after the fiscal year begins, Congress is accorded flexibility to modify the details consistent with the balanced budget requirement. Thus, Congress would possess the authority to amend, by law, the statement of receipts and outlays "provided revised outlays are not greater than revised receipts."

The Committee expects Congress generally to provide for balanced budgets but recognizes the need for congressional flexibility to respond appropriately to exigent circumstances. The national interest might require deficit spending, for example, in response to a natural disaster. During a period of recession, efforts to balance the budget might exacerbate the economic downturn. Section 1 takes such possibilities into account by permitting a statement of receipts and outlays to provide for "a specific excess of outlays over receipts" pursuant to a vote of three-fifths of the total membership of each House. In this context, a special voting requirement is essential to ensuring that Congress does not abuse its power to deviate from the new norm of a balanced budget.

Finally, Section 1 clarifies the binding nature of expenditure limitations by requiring Congress and the President to "ensure that actual outlays do not exceed" statement outlays.

Section 2

This section imposes a special voting requirement to increase taxes that is similar to the special voting requirement in Section 1 for adopting a statement delineating deficit spending. A bill increasing the tax burden must have the support of three-fifths of each House's total membership. The objective is to discourage excessive reliance on tax increases—rather than spending cuts—to achieve a balanced budget. Tax increases can depress economic activity and prove counterproductive to deficit reduction efforts.

The Committee intends that legislation be viewed as a whole to determine whether the net effect is a tax increase. A bill designed in part to plug tax loopholes, for example, will not require a three-fifths vote under the mandate of Section 2 if the legislation also incorporates fully offsetting tax reductions. Congress retains the flexibility to modernize tax law provided the overall design does not make federal taxation more burdensome. In addition, legislation to enhance tax collections by improving efficiency or augmenting enforcement efforts is not a bill "to increase tax revenue" within the meaning of this section.

Section 3

This section essentially requires the President to transmit a balanced budget to Congress prior to each fiscal year. It imposes a responsibility on the Executive Branch to make difficult choices among competing national priorities rather than permitting the President to distance himself (or herself) from the hard work of proposing spending cuts. Such a role for the Executive Branch will make it politically more difficult for Congress to disregard balanced budget principles.

The goal of bringing outlays into line with receipts is important enough to provide roles for both the Executive and Legislative Branches. The submission of budgets is a familiar Executive Branch function that should be guided by a balanced budget requirement. This does not undercut in any way the President's authority to suggest an additional alternative budget for a given year. That is, the President may propose an additional budget that is out of balance if the President believes the national needs require it and is prepared to recommend to Congress that it should exercise its prerogative under Section 1 to provide—by a three-fifths vote—for a specific excess of outlays over receipts.

Section 4

This section delineates circumstances that permit a waiver of the Balanced Budget Constitutional Amendment's provisions. Congressional authority to exercise a waiver "for any fiscal year in which a declaration of war is in effect" provides a very limited remedy because declarations of war are anachronistic in modern times. United States military actions since World War II have not involved declarations of war—which themselves can precipitate wider conflicts because of alliances among nations. The waiver based on an

"imminent and serious military threat to national security" is more likely to be utilized. Under the language of Section 4, Congress may declare such a threat by a joint resolution—supported by a majority of each House's total membership—that becomes law. The need for congressional action on a joint resolution and presidential assent (or a veto override) helps to ensure that this waiver mechanism will not be abused. Although Section 4 does not delineate all circumstances that may justify deviating from the norms of this constitutional amendment, the three-fifths vote thresholds in other sections give Congress the necessary flexibility to respond to appropriate situations.

Section 5

This section helps to define "total outlays" and "total receipts"—terms that appear in Section 1. All monies received by the Treasury except borrowed funds are embraced by the term "total receipts," and all disbursements from the Treasury except funds for repurchase or retirement of federal debt are embraced by the term "total outlays."

Section 6

This section sets the permanent limit on debt held by the public at the amount of debt on the effective date of the Article. Under the terms of Section 9, discussed later, that date cannot precede the first day of Fiscal Year 2002. Legislation to increase the permanent limit on debt held by the public requires approval of three-fifths of the whole number of each House—the same supermajority vote requirement applicable to approving a statement providing for an excess of outlays over receipts [Section 1] or approving a tax increase [Section 2].

Section 6 is designed to ensure that increases in the ceiling on debt held by the public require greater consensus than ordinary legislation. Such a requirement reflects sensitivity to the impact debt increases have on the interest burden imposed on future generations.

The need for Section 6 relates in part to the fact that the national debt can increase—in spite of the mandate of Section 1—if receipts for a given year fall short of anticipated receipts. Congress, in good faith, may adopt a statement of receipts and outlays providing for a balanced budget, but economic circumstances may prevent receipts from reaching their anticipated level. Congress and the President, under the terms of Section 1, are required to "ensure that actual outlays do not exceed the outlays set forth in such statement" but are not required to ensure that receipts equal the level delineated in the statement.

Imposing such a requirement relating to receipts might prove counterproductive because initiatives during a year to increase receipts—perhaps in the form of a tax increase—to make up for a shortfall might exacerbate an economic downturn. A limit on the national debt, however, is needed both to ensure that Congress acts in good faith in estimating receipts and to ensure that Congress makes adjustments for shortfalls by authorizing surpluses in good years. Without a debt ceiling Congress would not have the necessary incentive to compensate for deficit spending.

Section 7

This section requires that House and Senate votes under the Balanced Budget Constitutional Amendment be by rollcall. Such a provision fosters congressional accountability for decisions to approve deficit spending, increase taxes, or raise the debt limit.

Section 8

This section provides for Congress to "enforce and implement this article by appropriate legislation." This mandate for continued congressional involvement gives expression to a recognition that the broad language of the constitutional amendment cannot be effectuated without an active congressional role in delineating the details of implementation.

Section 9

This section delineates the effective date of the constitutional amendment. It will take effect at the beginning of Fiscal Year 2002 or on the first day of the "second fiscal year beginning after its ratification, whichever is later." Since the Article's preamble requires ratification by three-fourths of the states "within seven years after the date of its submission for ratification," Section 9's effective date provision is not open-ended. If Congress submits the Balanced Budget Constitutional Amendment to the states for ratification this year, the seven year deadline will expire in the year 2002—and the amendment will take effect—if at all—not later than the beginning of Fiscal Year 2004.

Section 9 contemplates a transition period of sufficient duration to permit the United States to move from deficit spending to a balanced budget without major economic dislocation. Although substantial spending cuts will require many adjustments, an implementation date of approximately six and half years or longer in the future will facilitate an orderly transition.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the resolution, H.J. Res. 1, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 13, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.J. Res. 1, a joint resolution proposing a balanced budget amendment to the Constitution of the United States, as ordered reported by the House Committee on the Judiciary on January 11, 1995.

H.J. Res. 1 would propose an amendment to the Constitution to require that the Congress, each year, adopt a budget in which total outlays of the United States do not exceed total receipts, unless the Congress approves a specific excess of outlays over receipts by a three-fifths vote in each House. The proposed budget submitted by the President would have to be balanced as well. The amendment also would require a three-fifths vote in each House to raise the limit on federal debt held by the public or to increase tax revenue. Such provisions could be waived for any fiscal year in which a declaration of war is in effect or in which the United States is engaged in conflict that causes an imminent and serious military threat to national security. The amendment would have to be ratified by three-fourths of the states within seven years of its submission for ratification, and would take effect beginning with fiscal year 2002 or the second fiscal year after its ratification, whichever is later.

The budgetary impact of this amendment is very uncertain, because it depends on when it takes effect and the extent to which the Congress would exercise the discretion provided by the amendment to approve budget deficits. The earliest the amendment could take effect would be for fiscal year 2002.

According to CBO's latest projections of a baseline that assumes inflation adjustments for discretionary spending after 1998, some combination of spending cuts and tax increases totaling $322 billion in 2002 would be needed to eliminate the deficit in that year. The amounts of deficit reduction called for in the years preceding 2002 depend both on the exact policies adopted and on when the process is started.

For illustrative purposes, CBO has devised one possible path leading to a balanced budget in 2002 (see attached table). Starting from the baseline that assumes an inflation adjustment for discretionary spending after 1998, that path first shows the savings that would be achieved if discretionary spending were instead frozen at the dollar level of the 1998 cap through 2002. Such a freeze, along with the resulting debt-service effects, would produce $89 billion of the required savings of $322 billion in 2002. Under this freeze pol-

icy, the buying power of total discretionary appropriations in 2002 would be approximately 20 percent lower than in 1995.

CBO also built into the illustrative path a possible course of savings from further policy changes. The amounts of those savings are not based on the adoption of any particular set of policies, but they do assume that policy changes are phased in between 1996 and 1999 in a pattern that is similar to the changes in mandatory spending enacted in the last two reconciliation acts. After 1999, the assumed savings increase at the baseline rate of growth for entitlement and other mandatory spending, excluding Social Security. Such a pattern of savings implies that the cuts implemented in earlier years are permanent and that no additional policy changes are made. If those savings were achieved entirely out of entitlement and other mandatory programs (excluding Social Security), they would represent about a 20 percent reduction from current-policy levels for those programs.

Over the entire 1996–2002 period, the savings in CBO's illustrative path that result directly from policy changes total more than $1 trillion (in relation to a baseline that includes an inflation adjustment for discretionary spending after 1998). Savings from policy changes, measured relative to a baseline with discretionary spending frozen after 1998, would be about $200 billion less. The required savings from policy changes would be smaller, and the debt service savings would be greater, if as we would anticipate, ongoing deficit reduction efforts over this period were to result in lower interest rates.

This resolution would not directly affect spending or receipts, so there would be no pay-as-you go scoring under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

Enactment of this legislation would not directly affect the budgets of state and local governments. However, steps to reduce the deficit so as to meet the requirements of this amendment could include cuts in federal grants to states, a smaller federal contribution towards shared programs or projects, an increased demand for state and local programs to compensate for reductions in federal programs, and/or an increase in federal mandates imposed on states of localities.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are James Horney, who can be reached at 226–2880, and Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER, *Director*.

ILLUSTRATIVE DEFICIT REDUCTION PATH

[By fiscal years, in billions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002	1996–2002
CBO January baseline deficit with discretionary inflation after 1998 [1]	176	207	224	222	253	284	297	322	NA
Freeze discretionary outlays after 1998:									
Discretionary reduction	0	0	0	0	−19	−38	−58	−78	−193

ILLUSTRATIVE DEFICIT REDUCTION PATH—Continued

[By fiscal years, in billions of dollars]

	1995	1996	1997	1998	1999	2000	2001	2002	1996–2002
Debt service	0	0	0	0	−1	−2	−6	−10	−19
Total deficit reduction	0	0	0	0	−19	−40	−63	−89	−212
CBO January baseline deficit without discretionary inflation after 1998 [2]	176	207	224	222	234	243	234	234	NA
Additional deficit reduction:									
Policy changes [3]	0	−32	−65	−97	−145	−156	−168	−180	−843
Debt service	0	−1	−4	−10	−18	−28	−40	−54	−156
Total deficit reduction	0	−33	−69	−106	−163	−184	−208	−234	−996
Resulting deficit	176	174	155	116	71	59	26	([4])	NA
Total change from baseline deficit with inflation after 1998									
Policy changes	0	−32	−65	−97	−164	−194	−225	−259	−1,035
Debt service	0	−1	−4	−10	−19	−31	−46	−64	−175
Total deficit reduction	0	−33	−69	−106	−182	−225	−271	−323	−1,210

[1] Assumes compliance with discretionary spending limits of Balanced Budget and Emergency Deficit Control Act through 1996. Discretionary spending is assumed to increase at the rate of inflation after 1998.

[2] Assumes compliance with discretionary spending limits of Balanced Budget and Emergency Deficit Control Act through 1996. Discretionary spending is frozen at the 1998 level after 1998.

[3] This represents only one of an infinite number of possible paths that would lead to a balanced budget. The exact path depends on when the deficit reduction begins and the specific policies adopted by the Congress and the President. This path is not based on any specific policy assumptions, but does assume policies are fully phased in by 1999.

[4] Less than $500 million.

Note.—NA = Not applicable.

Source: Congressional Budget Office.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.J. Res. 1 will have no significant inflationary impact on prices and costs in the national economy.

DISSENTING VIEWS

We reject this most recent effort of the new Republican majority to "commercialize" the Constitution by inserting into its sacred text an ill-defined, electoral "promise" to balance the budget that more aptly finds its home in the pages of the publication where it first appeared: TV Guide. If the political ploy behind this transparent effort is to play to a populist yearning, then it severely underestimates the wisdom and real desire of the American people to see their government take responsibility for balancing the budget—rather than simply taking credit for promising to do so after two more Presidential elections have languidly passed into history by the year 2002.

All of the undersigned believe that the crushing federal deficit threatens the personal liberty and quality of life of every American and must be continually reduced until real balance is achieved. Some of us believe that such an effort can be properly conceived and drafted to qualify for consideration by the States as an amendment to the Constitution. But none of us can subscribe to simply enshrining a "new promise" by government that could only be honored by vitiating existing promises in areas of social security and veterans benefits—or by creative financing which would shift the real economic burdens for cutting the federal deficit onto the backs of the States, counties, cities, towns, and school districts; only then to be shifted to the American taxpayer. While we reject the Republican demand to impose a three-fifths supermajority on Congress to pass new tax increases, we find it the height of disingenuousness for them to make such a demand with the secret knowledge that, if accepted, the hapless States would have no recourse but to raise revenues because of unfunded federal mandates—which the same Republicans refused to prohibit in the text of H.J. Res. 1. In its financial evasion and duplicity, H.J. Res. 1 is the legislative equivalent of a constitutional "junk bond"—so enticing to speculators and quick-fixers, but ultimately lacking the full faith and credit of the United States.

In the end, the fatal flaw of the proposed constitutional amendment is its failure to respect the American people by avoiding the real work and hard decisions necessarily entailed in truth-in-budgeting. Offered in the place of laying out precisely the path and procedure for eliminating the federal deficit is the gleaming promise to make the hard budget decisions somehow, somewhere and at some later time—but, in any event, not here, and not now, and surely not in relevant detail.

As members of the Judiciary Committee, we have a particular duty to look critically and specifically at all possible consequences, both intended and unintended, of a proposed amendment to the United States Constitution. The potential consequences of this amendment include substantial budget cuts, and significant

changes in the budgetary process itself, the role and powers of the Congress, the President, and the courts in that process, and the division of financial burdens, responsibilities, and control among federal, State and local governments.

Given the magnitude of these consequences, it is imperative that our consideration of a balanced budget amendment include the clearest possible answers to these questions. It is particularly disheartening that Committee Members were denied the full opportunity to offer amendments and debate the merits of H.J. Res. 1 (as described in the attached letter from all of the Committee Democrats to Chairman Hyde).

This effort is not serious, and by its snake-oil promises, does not augur well for the needed accountability we all must share if we are to safeguard and ensure the American way of life into the 21st century.

I. The Republicans Refuse to Disclose How They Plan to Balance the Budget

H.J. Res. 1 represents for the Republicans, the "heart" of their purported "Contract with America." In making their pledge to the American people, the Contract states solemnly:

> [I]n an era of official evasion and posturing, we offer instead a detailed agenda for national renewal * * *.

Thus, the Contract with America promises a detailed agenda instead of official evasion and posturing. But in rushing the budget amendment through the Judiciary Committee in a period of scrutiny spanning a mere five days, the legislation stands as a product of the very evasion and posturing that is the target of the new agenda. Omitted in the proposed amendment is just how the legislation will work, and the "detailed" discussion of precisely what cuts will be necessitated.

Let us be clear: cutting the deficit is important work, and Congress and the Administration took significant and painful action over the last two years to bring about $500 billion in deficit reduction. It needs to continue unabated. We are convinced that the American people want action, not talk; and they want Congress to deal with them openly and honestly. The message sent by the Republican Members of the Judiciary Committee is that the American people must trust them on the details, because they are intent on passing a balanced budget amendment without disclosing any of the details that allow the American people to evaluate whether the Constitution should be amended in this way.

Truth in budgeting means communicating to the American people exactly what programs would be cut—and by what order of magnitude—to achieve a balanced budget. Given what is at stake in the policy choices affecting our domestic economy and our military preparedness, it is inconceivable that we would consider and vote on a Constitutional amendment without even discussing the foreseeable outcomes of that amendment in terms of the budget cuts that will ensue. But that is exactly what this Committee has done in stifling debate and foreclosing the offering of amendments. Just before we began consideration of this amendment there were intimations of such a foreclosed process: In the past week, the Re-

publican Majority Leader, Dick Armey (R–TX) unabashedly stated: "I am profoundly convinced that putting out the details would make passage of an amendment virtually impossible. The details will not come out before passage." He further asserted that "knees would buckle" if the specifics were known. We were under the belief that "openness" in government—and certainly not "paternalism"—was to be the hallmark of the "new beginning." We respectfully submit that in an "open" democracy, the people are entitled to know the likely consequences of an action before it is enacted into law—no more so than when we are talking about amending our Constitution.

It is also worth noting that the support of the American people for a balanced budget amendment varies widely depending on what specific cuts would be made to balance the budget. The Republican majority frequently cites national surveys finding that some 80% of Americans support a Constitutional amendment, but not the more detailed findings of polls that show that support for the amendment drops to some 37% if it means cuts in federal spending on education, and to some 34% if it means cuts in Social Security. So the details do matter. Members of this Committee were entitled to know those details before being required to vote on the amendment; Members of the House of Representatives are entitled to know those details before this matter is brought to the Floor; Members of State legislatures are entitled to know those details before the amendment is sent to the States for ratification. Most important, the American people are entitled to know those details, and they are entitled to know them now as the process begins.

To address the obfuscation of the details of the budget process contemplated, Ranking Member Conyers offered a "truth in budgeting" amendment during committee markup of H.J. Res. 1, mandating that before a balanced budget amendment can be sent to the States for debate on ratification, the Congress would be required to adopt a plan showing precisely how it would propose to achieve a balanced budget. This amendment failed by a 15–19 vote, with every Republican Member voting against it. The message is unmistakable: the Majority appears intent on fulfilling a rhetorical pledge at the price of denying any information about what in the budget will be cut.

II. The Balanced Budget Amendment Will Place Social Security at Risk

The Social Security system is the most successful social insurance program in the Nation's history. Forty-two million Americans currently receive Social Security benefits[1] and another 134 million citizens are working and building credits for future benefits.[2] In addition to providing a cushion from poverty for the Nation's elderly and disabled, Social Security represents the Nation's most important life insurance program (worth $12.1 trillion in 1993, $1.3 trillion more than all private life insurance combined[3]). From 1937

[1] See H.J. Res. 1: Hearings before the House Judiciary Subcommittee on the Constitution, 104th Cong., 1st Sess. (1995) (Statement of Robert M. Ball at 15) [hereinafter, 1995 House Judiciary Committee Hearings].
[2] Id.
[3] Id.

to 1993, Social Security collected $4.3 trillion and paid out $3.9 trillion in benefits, leaving approximately $400 billion in trust fund assets.[4] And according to present calculations, these surpluses are expected to grow to $3 trillion by the year 2020.[5]

Because of the public's concerns that the Social Security surplus not be used to pay for other government programs, there has been a long-standing consensus that it should be taken "off-budget." The concept of a Social Security "trust fund" thus insures that the surplus will be available in the next century when needed to pay retirement benefits to the "baby boomers" generation and beyond. This is not a historical vestige from the 1930's and 1940's; it was reaffirmed in a unanimous 1994 vote implementing the Budget Enforcement Act of 1990 determination to exclude Social Security receipts and outlays from traditional budget calculations.[6]

In order to carry-over these previously agreed upon budget protections for Social Security into H.J. Res. 1, at the markup, Rep. Frank offered an amendment to remove Social Security receipts and outlays from balanced budget calculations.[7] However, the amendment was defeated in a 16–19 near absolute party line vote, with all of the Republicans but Mr. McCollum voting to include Social Security surpluses in balanced budget calculations.

In the debate, Chairman Hyde indicated his strong opposition to the Frank amendment, and acknowledged that the Republican Congress would not be able to balance the budget without using retiree funds in the Social Security trust fund:

> If you exclude receipts, the revenues that are received by the Social Security System from computing the total revenues of the government, if you will take that out of the equation, then the cuts that are necessary to reach a balanced budget become draconian. They become 22 to 30 percent. And you know that we cannot and will not cut programs that we want to subsist and continue by 22 to 30 percent * * * [Y]ou have to compute Social Security receipts in determining the income of this government so that the cuts you make to balance the budget are livable and not impossible.[8]

In effect, Mr. Hyde admitted the Republicans had no plans to balance the budget under the bipartisan budget rules accepted—that is without using the Social Security surplus. This is indeed a shocking admission coming from the Chairman of the Committee whose job is to rush along the "Contract" by foreclosing adequate

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[4] Id.

[5] 1994 Annual Report of the Board of Trustees of the Federal Old Age and Survivors Insurance and Disability Insurance Trust Funds (April 11, 1994).

[6] The text of the provision is as follows: Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Fund shall not be counted as new budget authority, outlays, receipts or deficit or surpluses for purposes of, one, the Budget of the United States Government, as submitted by the President; two, the Congressional Budget; or three, the Balanced Budget and Emergency Deficit Control Act of 1985.

[7] Mr. Frank's amendment would have added the following language to section 5: Total receipts shall not include receipts (including attributable interest) of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, or any successor funds, and total outlays shall not include outlays for disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, or any successor funds.

[8] Markup of H.J. Res. 1, House Judiciary Comm. (tr. at 66–67).

deliberations or improvements to the base text. The devastating corollary to Mr. Hyde's unvarnished acknowledgement is that Social Security benefits will indeed be on the "chopping block".

III. The Balanced Budget Amendment May Jeopardize Other Fundamental Elements of the Nation's Obligation to Its Citizens

Democrats on the Committee offered a narrow set of additional amendments in an effort to safeguard from the politics of the budget process certain additional commitments made to the American people. Each of these amendments was summarily rejected by the Republican majority on the Committee.

Mr. Scott and Mr. Reed offered amendments to honor military[9] and veteran's benefits[10] and not cast them up as a target for balanced budget politics. The amendments were designed to protect the benefits of men and women either in or retired from our Armed Forces, including benefits paid to veterans for disabilities incurred or benefits paid to survivors for their death. The amendments, predicated on a belief that there are certain commitments that our Nation has made that cannot and should not be renounced, were designed to protect any benefit earned and promised to people who risked or gave their lines for our Constitution and our very security.

Next, Ms. Jackson Lee[11] sought to safeguard the Nation's military preparedness from the impending budget cuts. Without such a clear statement, the Department of Defense projects that budget cuts for it could range up to $520 billion by fiscal year 2002.[12] Such cuts, the Department noted "would fundamentally change the character of America's military posture, make our new strategy insupportable, call into question our ability to fulfill U.S. commitments to our allies and to protect our interests worldwide, and undermine America's global leadership."[13] Summary dismissal of personnel (it takes 16 years of schooling and proper assignments to prepare a battalion commander to lead troops into combat), cancellation of equipment purchases (the average major weapons procurement program requires 8 years of development and testing) the inability to buy repair parts (which require 3 years lead time), and research and development cuts are possibilities that the Nation's defense cannot afford to risk. These are precisely the same areas about which our Republican colleagues have railed in recent months as being subject to too much retrenchment in the post-Cold War pe-

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[9] Mr. Scott's amendment would have added the following language to section 8: However, no legislation to enforce or implement this Article may impair any payment or other benefit earned through service in the Armed Forces if such payment or other benefit was earned under a program established before the ratification of this Article.

[10] Mr. Reed's amendment would have added the following language to section 8: However, no legislation to enforce or implement this Article may impair any payment or other benefit based upon a death or disability incurred in, or aggravated by, service in the Armed Forces if such payment or other benefit was earned under a program established before the ratification of this Article.

[11] Ms. Jackson Lee's amendment would have added the following language to section 4: Congress may waive the provisions of this Article for any fiscal year in which the President, in consultation with the Joint Chiefs of Staff, determines that military readiness requirements of the Department of Defense are not being fully funded.

[12] See 1995 House Judiciary Hearings, supra note 1 (statement of Undersecretary of Defense John J. Hamre).

[13] Id.

riod. Obviously, their defense position on the merits was vacated in the rush to push word-for-word the language of the proposal dictated by the Contract's sloganeering. The defeat of the Jackson Lee amendment means that these possibilities may well come to pass.

IV. THE BALANCED BUDGET AMENDMENT PLACES STATE AND LOCAL TAXPAYERS AT RISK

As currently drafted, H.J. Res. 1 places an inordinate risk that State and local governments will be forced to bear the brunt of the costs of balancing the Nation's budget through a variety of unfunded mandates. These mandates could take the form of increasing the States' share of programs such as Medicaid and Aid to Families to Dependent Children. The private sector could also face significant increases in regulations and mandates imposed on it as part of a budget balancing imperative.

It is because of these concerns that the National League of Cities testified in opposition to H.J. Res. 1. Rutland, Vermont Mayor Jeffrey N. Wennberg warned that "any balanced budget amendment would almost certainly increase unfunded mandates on cities and towns as well as decrease what little federal assistance currently remains to fund existing mandates." He noted that the "pressure to order state and local spending will grow geometrically under a balanced budget amendment unless an equally powerful restriction on [unfunded] mandates is enacted."[14] Mayor Wennberg's concerns were echoed by Rep. Karen McCarthy, past President of the National Conference of State Legislatures[15] and Vermont Governor Howard Dean, Chairman of the National Governor's Association.[16]

The projected impact of the balanced budget amendment on the States in indeed staggering. A recent Treasury Department study concludes that in order to balance the budget by the year 2002, "federal grants to states would be cut by a total of $97.8 billion in fiscal 2002." Other federal spending that directly benefits state residents would be cut by $242.2 billion in fiscal year 2002.[17] The projected State tax increases needed to offset these cuts would be significant—as high as 21.4% in Rhode Island and 27.8% in Louisiana.[18]

The only way to protect the State and local governments from the threat of increased unfunded mandates would have been to include a Constitutional prohibition in the text of H.J. Res. 1. Rep. Frank sought to do precisely this at the Committee markup; but his first proposal was ruled non-germane by Chairman Hyde, and his second proposal was defeated by a 15 to 20 party-line vote.[19]

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[14] 1995 House Judiciary Hearings, supra note 1 (statement of the Honorable Jeffrey N. Wennberg).

[15] Id. (statement of Representative Karen McCarthy).

[16] See Richard Willing "Amendment Would Cost Michigan," The Detroit News, Jan. 13, 1995, at 5A.

[17] Letter from Joyce Carrier, Deputy Assistant Secretary for Public Liaison, Department of Treasury to the Honorable Howard Dean, Chairman, National Governor's Association (January 12, 1995).

[18] Id. (Table 1).

[19] While some have sought to alleviate the concerns of the States by adopting a statute relating to unfunded mandates, this would ultimately not offer the protection the States need since any legislation would not be binding on a future Congress.

V. THE MANNER IN WHICH THE BALANCED BUDGET AMENDMENT IS TO BE IMPLEMENTED IS DISTURBINGLY UNCLEAR

Another significant problem posed by H.J. Res. 1 concerns the uncertainty that will inevitably be spawned concerning its implementation and enforcement. This concern was raised but was dismissed by the Republican majority as a minor point, not worthy of consideration. A wide range of noted Constitutional scholars agree that problems in the balanced budget amendment's implementation could lead to its undoing. In testimony concerning balanced budget proposals last Congress, one of the Nation's preeminent constitutional scholars, Harvard Professor Laurence H. Tribe, warned:

> [A] balanced budget amendment, if adopted as part of the Constitution, would pose severe and probably intractable challenges of implementation and enforcement that would be more likely to unbalance the Constitution than to balance the budget.[20]

Moreover, Solicitor General and conservative Constitutional scholar Robert Bork envisioned the following scenario:

> Scores or hundreds of suits might be filed in federal district courts around the country. Many of these suits would be founded on different theories of how the amendment had been violated. The confusion, not to mention the burden on the court system, would be enormous. Nothing would be settled, moreover, until one or more of such actions finally reached the Supreme Court. That means we could expect a decision [about a given fiscal year five years after it has passed]. Nor is it at all clear what could be done if the Court found that the amendment had been violated five years earlier.[21]

USE OF UNDEFINED TERMS

Section 1 of H.J. Res. 1 lays out the core operative requirements of the balanced budget amendment by requiring that the President and Congress agree to a budget by which "outlays" do not exceed "receipts." (Section 5 provides that the reference to outlays and receipts is intended to refer to outlays and receipts of the "United States.") Unfortunately, the meaning of these crucial terms is not clearly articulated in H.J. Res. 1.

For example, a number of ambiguities exist with regard to the term "outlays." Would it include amounts lent by the government under federal loan programs?[22] And how would federally guaranteed loans be treated—Would the entire amount of the loan be considered an outlay? Or just the expected cost of the guarantee? Or would nothing be considered an outlay unless and until a default

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[20] Constitutional Amendment to Balance the Budget: Hearings Before the Senate Comm. on the Budget, 102nd Cong. 2d Sess. (1992) (statement of Laurence H. Tribe at 13) [hereinafter, 1992 Senate Budget Committee Hearings].

[21] Letter from Robert H. Bork to Thomas F. Foley (July 10, 1990), reprinted in Robert H. Bork, "A Seasoned Argument," Washington Post, June 10, 1992, at A23.

[22] Prior to 1990, net lending was considered to be an outlay. Under current budget practice, only the estimated subsidy value of the federal loans is scored as an outlay. See § 13201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508).

occurred?[23] And how would long-term leases and purchase contracts be treated? Would the entire amount due be treated as an outlay in the year the lease is signed? Or would outlays only be recorded as payments are actually made?[24]

Determining which outlays are outlays of the "United States" presents a number of additional problems in definition. For example, how would the expenditures of congressionally-created corporations—such as the Federal Deposit Insurance Corporation, the United States Uranium Enrichment Corporation, Fannie Mae and the Federal Agricultural Mortgage Corporation be treated?[25] And what about outlays of the Postal Service and Federal Reserve?[26] The fact that Congress has been able to develop rules for dealing with many of these questions for budgetary purposes would not necessarily govern the Constitutional treatment of these terms.[27]

Even more problematic is section 2's requirement that no bill to increase "tax revenues" become law unless approved by a three-fifths majority. For example, it is unclear how a bill to require certain additional kinds of record-keeping designed to improve tax compliance would be treated. And what about a bill that is estimated to increase tax receipts in the first two years after its enactment, but reduce receipts in the next three years? Or a bill which increased taxes on upper-income taxpayers but reduced them for middle-class taxpayers? Similarly, how would bills to eliminate tax loopholes or extend taxes that are currently in effect be treated under H.J. Res. 1? And would a bill which reduced capital gains rates but increased tax receipts be subject to the three-fifths vote requirement? By elevating the role of revenue estimates to a Constitutional level, H.J. Res. 1 could retroactively invalidate all sorts of tax legislation and create the potential for confusion and interbranch gridlock while these matters are resolved.

A further serious problem is raised by the drafting of the section 4 waiver authority. Litigation arising under the War Powers Act has often been dismissed from the Federal courts because it presents a "political question". But the courts are not so likely to turn away when asked to interpret a constitutional amendment. Do we want the courts to determine whether a particular event poses an "imminent and serious military threat to national security"? Indeed, past military actions undertaken by the U.S. might not meet the waiver standard.

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[23] Until 1990, the practice was to not consider a loan guarantee as an outlay until a default occurred, but in 1990 the practice was changed to treat the expected cost of the guarantee to be an outlay. The meaning of this term would have a significant effect on the government's ability to respond to financial calamities through federal loan guarantees, such as the potential bankruptcy of Chrysler in the 1970's and the recent financial crisis in Mexico. See § 13201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508).

[24] Until 1990, outlays were only recorded as lease payments were made, since then the entire amount due has been treated as an outlay in the year the lease is signed. If the pre-1990 interpretation is accepted, even if leasing is not economically sound. See Budget Scorekeeping Rule No. 11 to the Statement of Managers to the Omnibus Budget Reconciliation Act of 1990 at 1174 (H. Rept. No. 101–964).

[25] Under current practice only the outlays of the FDIC and the Uranium Enrichment Corporation are included in the federal budget. See Budget of the United States Government for Fiscal Year 1995 at App. pg. 1029.

[26] Currently, Postal Service and Federal Reserve outlays are generally not included in the budget. See Budget of the United States Government for Fiscal Year 1995 at App. pg. 952 and 1043.

[27] See Balanced Budget Amendment—S.J. Res. 41: Hearings before the Senate Comm. on Appropriations, 103d Cong., 2d Sess. (1993) (statement of Yale Law Professor Burke Marshall) [hereinafter, 1993 Senate Appropriations Committee Hearings].

JUDICIAL REVIEW

Moreover, H.J. Res. 1, as currently drafted, is totally silent on the issue of judicial review. Although legal scholars agree that the absence of a clear statement would permit some form of judicial review,[28] the lack of specificity as to the manner of the review denies crucial information to those legislators who may be called upon to vote on the resolution's adoption.[29]

One potential uncertainty concerns the applicability of the "political question doctrine," which is designed to restrain the Judiciary from inappropriate interference in the business of other branches of the government.[30] Although former Attorney General Barr has testified that the courts are "likely to accord the utmost deference to the choices made by Congress in carrying out its responsibilities under the amendment,"[31] the majority of scholars, relying in part on recent judicial cases in which the judiciary has elected to review issues implicating the other branches of government,[32] have indicated the doctrine is unlikely to limit judicial intervention in the present case.

An additional area of confusion relates to judicial limitations concerning "standing." Article III of the Constitution limits the jurisdiction of Federal courts to "cases" of "controversies," which has evolved into a requirement that plaintiffs show sufficient injury in the form of "standing" before being able to seek judicial relief.[33] While it is unclear whether a taxpayer would be able to show sufficient injury to have standing to bring suit in federal court challenging any Congressional failure to comply with the balanced budget amendment,[34] standing is likely to be more compelling if sought by a Member of Congress,[35] an entire House of Congress,[36] or an entitlement recipient who has been denied benefits as a result of a

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[28] In recent hearings before the House Judiciary Subcommittee on the Constitution, William J. Barr, while strongly supporting H.J. Res. 1 and generally minimizing the likelihood of pervasive judicial activity concerning the balanced budget amendment, acknowledged that the "courts will [not] ignore clear instances of abuse." See 1995 House Judiciary Hearings, supra note 1 (statement of William P. Barr at 15).

[29] In addition, failure to specifically address the issue of judicial review is inconsistent with the legislative checklist included in the Republican's own "Contract with America." See Contract with America, House Republican Conference Legislative Digest at 39 (September 27, 1994).

[30] See Baker v. Carr, 369 U.S. 186, 217 (1962).

[31] 1995 House Judiciary Hearings, supra note 1 (statement of William P. Barr at 13).

[32] Department of Commerce v. Montana, 112 S. Ct. 1415 (1992) (congressional apportionment); United States v. Munoz-Flores, 495 U.S. 385, 394 (1990) (Constitutional requirement that tax bills originate in the House of Representatives).

[33] See, e.g. *Lujan* v. *Defenders of Wildlife,* 1125 S.Ct. 2130 (1992).

[34] In *Flast* v. *Cohen,* 392 U.S. 83 (1968), the Supreme Court opened the door to a potentially vast array of court challenges to federal budgeting decisions when it permitted a taxpayer to challenge federal aid to parochial schools as being in violation of the First Amendment Establishment Clause. However, some have asserted that *Flast* should be limited to cases challenging congressional action taken under its taxing-and-spending power, rather than its borrowing power. See 1995 House Judiciary Hearings, supra note — (statement of William P. Barr at 9); but see also 1992 Senate Budget Committee Hearings, supra note 20 (statement of Laurence H. Tribe at 31, n. 5) ("Although the Court has limited *Flast* to instances where Congress exercises its taxing and spending authority * * * that limitation would not preclude taxpayer standing in cases involving the balanced budget amendment—which assuredly does relate to congressional taxing spending authority.")

[35] See, e.g., *Coleman* v, *Miller,* 307 U.S. 433, 438 (1939) (Kansas state senators had standing to protest lack of effect of votes for ratification of Child Labor Amendment, which ratification has been rescinded by subsequent act of the legislature); *Kennedy* v. *Sampson,* 511 F.2d 430 (D.C. Cir. 1974) (legislators have standing to challenge constitutionality of pocket veto). But see *Harrington* v. *Bush,* 553 F.2d 190 (D.C. Cir. 1977).

[36] See *Burke* v. *Barnes,* 479 U.S. 361, 364 n.* (1987) ("a House of Congress suffers a judicially cognizable injury when the votes it has cast to pass an otherwise live statute have been nullified by action on the part of the Executive Branch").

questionable impoundment or sequestration of funds.[37] And there appears to be a general consensus among the commentators that State courts, which are generally available to hear constitutional challenges, are not subject to any federal standing requirements.[38] Although, as noted above, there is some disagreement over the range of cases the courts will entertain in reviewing the balanced budget amendment, there is widespread agreement that they will play some role.[39] Unfortunately, the remedies available to a court which chooses to intervene are also not spelled out with any particularity. A range of possible remedies are theoretically available to the courts, ranging from tax increases and spending cuts to declaratory judgments as to the meaning of the Amendment's terms. The most frightening scenario to many taxpayers is court-ordered tax increases.[40] And the specter of court-ordered budget cuts or automatic sequestrations of funds in the middle of a fiscal year is no less likely, or disturbing.

H.J. Res. 1 would also seem to raise the possibility that the President could choose to respond to the likelihood of an unbalanced budget by unilaterally impounding funds. Section 1 seems to give the President authority to make sure the budget stays in balance, and the Department of Justice has testified that this may well permit the President to unilaterally cut programs.[41] However, the terms of the Amendment are again deficient in that they fail to describe how the President is to achieve this balance. Proponents of H.J. Res. 1 have asserted that its deficiencies can be cured through so-called "implementing legislation."[42] However, given the lack of consensus concerning budgeting matters during the last several years, there is no guarantee that Congress would be able to muster the necessary majorities in both houses to obtain the President's signature for any such legislation. Even if legislation is adopted, it would not necessarily conform to Constitutional constraints.[43]

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[37] See 1994 Senate Appropriations Committee Hearings, supra note 27 at 82 (testimony of Charles Fried) (under the amendment, "a beneficiary of impounded funds surely could * * * enlist the aid of the courts"); Balanced Budget Amendment: S.J. Res. 1: Hearings before the Senate Comm. on the Judiciary, 104th Cong., 1st Sess. (1995) (statement of University of Chicago Law Professor David Strauss at 6).

[38] See *Asarco, Inc.* v. *Kadish*, 490 U.S. 605, 617 (1989). See also, 1995 House Judiciary Hearings, supra note 1 (statement of William P. Barr at —).

[39] See earlier discussion.

[40] Support for such judicial authority exists by virtue of *Missouri* v. *Jenkins*, 495 U.S. 33 (1990), in which the Supreme Court held that a federal district court could mandate a State tax increase in order to fund a school desegregation program. While some commentators believe the case should be limited to its facts (see 1995 House Judiciary Hearings, supra note 1, statement of William P. Barr at 17–19), former Reagan Administration Solicitor General Charles Fried has expressed concern that with the passage of a balanced budget amendment, under *Jenkins*, court intervention could "extend to ordering or imposing taxes." See 1994 Senate Appropriations Committee Hearings, supra note 20 at 86 (statement of Charles Fried).

[41] See 1995 House Judiciary Committee Hearings, supra note 1 (statement of Assistant Attorney General Walter Dellinger at 5) (Constitutional impoundment authority "must take precedence over mere statutes, including appropriations bills, entitlement packages, and the Congressional Budget and Impoundment Control Act of 1974"); 1994 Senate Appropriations Hearings, supra note 27 at 82 (statement of Charles Fried).

[42] See, e.g., 1995 House Judiciary Committee Hearings, supra note 1 (statement of William P. Barr).

[43] For example, it is doubtful the courts or the President would countenance Congress unconstitutionally limiting their enforcement roles as permitted by H.J. Res 1. Similarly, an implementing statute would not be able to cure inherent Constitutional deficiencies in the Amendment's scope and meaning.

CONCLUSION

For all these reasons, every Member of the Democratic minority rejects the substance and process surrounding this first item of the "Contract with America": The unfortunate truth is that a real measure of bipartisan support might have been garnered had the new Majority decided to "try out" a collaborative model of legislating—which they themselves have held up for years as being sorely lacking when the Democrats held sway.

The Republicans were right about one thing: the American people want their fiscal house put in order. But they demand to read the mortgage and repayments documents very carefully before signing on the bottom line. After all, that is what a contract is all about. The disingenuous Republican response of "trust me" does not even pass the threshold test of minimally informing and involving the citizenry in the important work of its elected representatives.

We will not be party to "trust me" politics; we will not blithely assume that there is "glide path" to a zero deficit by throwing the automatic pilot switch; we will not succumb to trading our responsibility to make hard, practical choices for the ease of soaring, pleasing rhetoric. As we had to state in the introduction to these views, H.J. Res. 1 is not a serious effort to address a very serious problem.

JOHN CONYERS, Jr.
PAT SCHROEDER.
MELVIN L. WATT.
ZOE LOFGREN.
JOHN BRYANT.
RICK BOUCHER.
JERROLD NADLER.
SHEILA JACKSON LEE.
HOWARD L. BERMAN.
JOSÉ E. SERRANO.
CHARLES E. SCHUMER.
BARNEY FRANK.
JACK REED.
BOBBY SCOTT.
XAVIER BECERRA.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, January 12, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, 2138 Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: We are profoundly distressed—and frankly, astonished—at the manner in which the Committee's most important business has been conducted in the first week of the new Congress. It is not an auspicious beginning for bipartisan cooperation and mutual respect or a herald for the "new beginning" so highly touted by the Republican Leadership in the past few months. From insufficient notice of public hearings to the extraordinary break with Committee precedent in prematurely cutting off

full and fair debate over a Constitutional amendment, we are compelled to write to ask that you immediately reevaluate the direction the Committee appears to be heading, and specifically, to reconvene the markup on the balanced budget Constitutional amendment that was unilaterally terminated in midstream yesterday evening at 6:00 p.m.

While we are cognizant that you yourself are under heavy pressure by the House Republican Leadership to rush to judgment a series of items under the so-called "Contract with America", there can be no excuse for not affording the "new" Minority the same basic incidents of fairness and notice always accorded to the "old" Republican Minority during prior leadership of the Committee. While it is apparent to us that Committee Republicans have been working round-the-clock on their legislative agenda prior to the start of the new Congress, the Democrats have been willing to adapt as much as possible to the time imperatives unilaterally decreed upon them provided that they have sufficient notice, due process safeguards, and sufficient resources to discharge their most serious responsibilities as lawmakers.

From start to finish, the proposal to amend our Constitution in requiring a balanced budget has spanned three days. We do not accept the thesis that because prior hearings were held in a number of Congresses, no real deliberative effort was needed in this instance to consider such fundamental change to our Nation's most sacred charter. Quite the contrary, there are now 11 new Members, both Republican and Democrat, who have never participated in these deliberations; and even for those who have considered similar proposals, new issues have been raised by the States and other groups that needed exploration before a thoughtful vote can be cast.

As you are aware, Committee Democrats did not learn of your desire to conduct a hearing on the proposed Constitutional amendment until Thursday, January 5, 1995. The hearing was set for Monday, January 9, and the witnesses were preselected with no consultation from our side. Such a procedure led us to assert our rights under Rule XI of the House Rules that the Minority be accorded an additional day of hearings so as to present witnesses that it desired to hear from. You did accord that right to a hearing, but scheduled it for the very next day, Tuesday, January 10, and then proceeded to schedule markup for the following day, Wednesday, January 11. Even so, we were able to put together a hearing on Tuesday that helped round out a hearing record that was sorely lacking in addressing a number of issues of both constitutional and economic concern surrounding the language found in H.J. Res. 1.

Building upon the hearing record that we helped develop, the Minority worked together to ensure that amendments were crafted to address those issues identified by experts as problematic with the proposal under consideration. Yesterday, the markup began at 9:30 a.m. at which point a full hour discussion was devoted to amendments of your choice. The Committee then moved on to other amendments for a period of one hour and 45 minutes until the lunch break you declared at 12:15 p.m. When the Committee resumed at 1:30 p.m., more amendments were offered but were suspended for approximately 25 minutes to accommodate Republican

Members who needed to attend other organizational meetings. At approximately 5:00 p.m., we received word that there was under consideration by you the notion that the Full Committee markup would simply terminate in the next hour for the purported reason that some Members needed to catch planes back to their districts. Such a reason would be understandable, but would not preclude reconvening the Full Committee in the near future to complete this most important piece of legislative business. However, that scenario was not to be. At 6:00 p.m., your Members with their Majority-control over the Committee, voted to move the previous question—thereby cutting off debate and votes on over 20 other amendments that were prepared and ready to be offered by the Democrats in good faith.

Your actions are especially incomprehensible in light of the fact that the House Republican Leadership announced earlier this week that they had moved back the date for Floor consideration of H.J. Res. 1 from January 19 to at least January 24. Reconvening the Full Committee today (January 12) or even tomorrow (January 13) would in no way have procedurally upset the timeframe for full consideration by the House based on the new schedule announced.

There are few things more weighty in this Committee's subject matter jurisdiction than a proposed amendment to the Constitution. Beside the amendments that were offered by our side, other significant amendments remain that need to be addressed: how the imperatives of the balanced budget proposal would be handled in times of recession; how government insurance and guarantee programs would be treated; how a variety of standing issues (for both State and local governments as well as affected private parties) would be treated, particularly given the silence of the proposal at hand; how surpluses in the budget from one year to the next would be treated for purposes of balancing requirements; how questions on the Presidential power to impound would be reconciled with the thrust of the proposal at hand; how programs involving childhood healthcare, education, and research and development would be treated; whether Medicare would be put at risk by the dictates of the proposal at hand; whether the three-fifths waiver rules appearing in the proposal would be retained in each place they appear, or whether other super-majority requirements would be added regarding such items as capital gains taxes, and middle-income tax increases, to name a few; whether the proposal completely ignored the effect on the capital markets in not protecting the investment of investors in U.S. Treasury securities; whether student loan programs and obligations would be jeopardized; and vexing definitional problems with the way "outlays" are defined and treated.

All of these amendments should have been considered at yesterday's markup, but were not. The result is that the Full House will not have the benefit of the Committee's substantive expertise on these questions before each Member casts his or her vote in the weeks ahead. The remedy is very simple indeed: simply reconvene the Full Committee to finish its unfinished business. We stand ready to work cooperatively with you in this regard and await notice of the next date when the Committee can resume its full and fair deliberations on this important legislative proposal.

The fractured and frayed beginnings of this Committee's work in this Congress can be repaired quite quickly with the simple ingredient that, unfortunately, already appears to be in short supply: good faith. We ask your help in adding that ingredient back into the mix of our work together.

Sincerely,

John Conyers, Jr., Pat Schroeder, Barney Frank, Jerrold Nadler, Howard L. Berman, John Bryant, Melvin L. Watt, Bobby Scott, Rick Boucher, Charles E. Schumer, José E. Serrano, Xavier Becerra, Jack Reed, Zoe Lofgren, Sheila Jackson-Lee.

ADDITIONAL VIEWS

We find the need to write these additional views because of our most serious concern with H.J. Res. 1: its fundamental differences with existing constitutional provisions. The Constitution written by our founding fathers and the amendments adopted to it to date serve two basic functions: (i) allocating power within our democratic nation (among the three branches of the federal government, between the two houses of Congress and between the federal government and the States) and (ii) protecting fundamental individual rights, such as life, liberty, property, free speech, fair trials, and equal justice under the law.[44] H.J. Res. 1, by contrast, seeks to enshrine a particular view of budgeting and economics into the Constitution, buttressed by a series of parliamentary requirements.

H.J. Res. 1 differs from other Constitutional amendments in that it confers on Congress power it already has—namely the ability to balance the budget. H.J. Res. 1 would also create the only Constitutional principle that is subject to waiver procedures. As such, the Amendment differs dramatically in character and nature from the other provisions of the Constitution and its adoption could ultimately serve to weaken respect for the entire document. In enshrining an economic theory into the Constitution,[45] H.J. Res. 1 also threatens to upset the basic balance of power between the branches of the federal government. The resolution reallocates one of Congress' core functions—federal budgetary priorities—to the Judicial Branch.[46] Since federal judges have been Constitutionally endowed with lifetime tenure, this could result in a situation by which the most ill-suited and politically least accountable of our branches of government is forced to adjudicate highly technical budgetary matters.

Moreover, by locking in a series of three-fifths super-majority requirements with regard to waivers of budgetary matters,[47] H.J. Res. 1 also deviates from the bedrock constitutional principle of majority rule.[48] As James Madison wrote in *Federalist 58:*

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[44] *See* 1994 Senate Appropriations Committee Hearings, supra note 27 at 154 (statement of Professor Archibald Cox).

[45] It is instructive to note that Oliver Wendell Holmes warned against such a provision being included in the Constitution when he wrote, the Constitution ought not "embody a particular economic theory." See 1994 Senate Appropriations Committee Hearings, supra note 27 at 184 (statement of Kathleen M. Sullivan).

[46] The founding fathers explicitly rejected the notion that discretionary budget authority should be granted to either the Judiciary or the Executive Branch. See 1995 Hearings before the House Judiciary Committee, supra note 1 (statement of Walter Dellinger, notes 28–30) (citing remarks of James Madison and Alexander Hamilton in the Federalist Papers to the effect that the power of the pursue should be placed in the hands of Congress, rather than the Executive Branch or the Judiciary).

[47] See §§ 1, 2, and 6 of H.J. Res. 1.

[48] Although the Constitution requires two-thirds super-majorities for a number of decisions (conviction of officers tried on impeachment, expelling a Member of Congress, overriding a Presidential veto, approving treaties, and proposing Constitutional amendments), these all apply to situations where it is necessary to place checks on potential exercises of power or protect indi-

> [If] more than a majority [were required for legislative decisions, then] in all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would no longer be a majority that would rule: the power would be transferred to the minority.[49]

The three-fifths super-majority requirement would serve to decrease the overall accountability of Congress and result in a proportionate increase in the power of special interests. And in an effort to garner the three-fifths support to obtain a budget waiver, Congress may be more inclined to resort to pork-barrel spending and political log-rolling, with the result being larger, not smaller deficits.

Most importantly, to the extent H.J. Res. 1 is not vigilantly enforced, it would diminish the Nation's respect for the Constitution as a whole. As Alexander Hamilton noted in the Federalist Papers:

> Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers toward the constitution of a country, and forms a precedent for other breaches where the same pleas of necessity does not exist at all, or is less urgent and palpable.[50]

And if the Amendment results in a reduction in our deficits, but does not achieve the Constitutionally-mandated balance, Assistant Attorney General Walter Dellinger predicts a loss of respect for other Constitutional provisions:

> For how long would we as a people continue to make difficult decisions to comply with the First Amendment or with the Due Process or Takings Clause of the Fifth Amendment if we had routinely failed, for lack of an enforcement mechanism, to come within a billion dollars of complying with the most recent amendment to our Constitution?[51]

Unfortunately, it is no answer to respond that the Amendment will be fully self-enforced by Congress, out of fidelity to the Con-

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vidual rights. There is no precedent for requiring a super-majority to allow a budget to be approved and the government to continue its operations.

[49] *The Federalist* No. 58, at 361 (James Madison) (Clinton Rossiter ed., 1961).

[50] *The Federalist* No. 25, at 167 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

[51] 1995 House Judiciary Hearings, supra note 1 (statement of Walter Dellinger at 12–13).

stitution or concern that the voters will throw them out if a balanced budget is not forthcoming. This is because each individual Congressman may support a balanced budget, but have a different vision of how to achieve it than his fellow Congressmen. In the end, no individual Congressman would bear institutional responsibility for a balanced budget.

JOHN CONYERS, Jr.
PAT SCHROEDER.
MELVIN L. WATT.
HOWARD L. BERMAN.
JERROLD NADLER.
BARNEY FRANK.
JOSÉ E. SERRANO.
JACK REED.
BOBBY SCOTT.
XAVIER BECERRA.

ADDITIONAL VIEWS OF REPRESENTATIVE JOHN BRYANT

I am profoundly concerned about the truncated process used by the Majority Members of this Committee to speed this proposed Amendment to the Constitution of the United States of America to the Floor of the House of Representatives. The procedure adopted by the Majority is nothing more than a gag rule, which has prevented the Committee—and the American public—from gaining a full understanding of the weaknesses of the proposed amendment and its potential for harm to this great Nation.

As set out in greater detail in a letter to Chairman Henry J. Hyde, which is attached and made a part of the dissenting views, the entire hearing and mark-up process for the proposed amendment took only three days, with the Democratic Members of the Committee given only two days notice of the initial hearing.

The Committee's mark-up of the proposed amendment was brought to an abrupt close when the Majority voted unanimously to shut off debate, preventing the Committee from considering a host of perfecting amendments that Democratic Members of the Committee were prepared and waiting to offer. No general debate was permitted. Members of the Committee can recall no other occasion when debate was stifled in this manner.

The amendment process was stopped just as Rep. Conyers was about to offer an amendment that would have provided the Congress with flexibility to deal with the effects of a recession. Specifically, Rep. Conyers' amendment would have given Congress the authority to waive the requirement for a balanced budget "[i]f real economic growth has been or will be negative for two consecutive quarters," the widely-accepted definition of a recession. To implement such waiver authority, the Conyers amendment would have required Congress to pass, by simple majority of each House, a law to authorize such a waiver for the year in which a recession occurred and the fiscal year that followed. Without such a provision, the only way that Congress would have of responding to the danger posed by a recession would be pursuant to section 1 of the proposed Balanced Budget Amendment, which provides that the Congress "may provide . . . for a specific excess of outlays over receipts by a directed solely to that subject in which three-fifths of each House agree to such excess."

The recession issue was raised during the Minority's day of hearings by Robert Eisner, William R. Kenan Professor of Economics Emeritus at Northwestern University. Eisner testified that when the economy slows or shrinks is "hardly the time to cut government expenditures to prevent a deficit." The danger is readily apparent. He said the proposed amendment would:

> Force what almost all economists would recognize as procyclical behavior, that would aggravate economic downturns. This would likely put us in a position where ef-

> forts to eliminate a deficit, by slowing the economy all the more, would make it necessary to take further action that would in turn further slow the economy. We would be caught in a situation where the actions mandated to eliminate the deficit would keep making it worse.

The failure of the Committee to consider this critical issue during debate on the bill is but an example of the many issues that the Majority is unwilling to discuss in their rush to enact this proposal. No one could reasonable argue that the amendment by Rep. Conyers was dilatory or unimportant. Other than the Majority's unwillingness to debate and vote on this and other amendments, there was no real bar to their consideration.

The problem is only compounded by the Republican leaders' apparent decision to bar perfecting amendments from consideration when the proposed amendment to the Constitution is taken up on the House Floor and Chairman Hyde's withdrawal of an offer to assist Members to have their amendments made eligible for consideration. These decisions by the Majority belie Chairman Hyde's statement during the mark-up that the Majority wants debate to be "as open as possible."

There is no substitute for reasoned debate. I hope that the Majority's decision to cut off debate in this instance is not a harbinger of what the Committee on the Judiciary can expect for the remainder of the 104th Congress.

JOHN BRYANT.

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